IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 10086 OF 2004

Sarala M. Angaj .. Petitioner

V/s

The Chairman,
Shri Dudhsagar Shikshan Prasarak Mandal
and Ors. .. Respondents

Mr.S.S. Pakale for the Petitioner.

Mrs.Prabha U. Badadare for Respondents Nos.1 to 3.

Mr.C.R. Sonawane, A.G.P. for Respondents Nos.4 to 6.

CORAM : H.L. GOKHALE &
MRS. R.S. DALVI, JJ.

DATE : 22ND JULY 2005

**P.C.** :

1. Rule. Rule is made returnable forthwith.

2. Heard the learned counsel for the parties.

3. The Petitioner is a handicapped lady. She joined initially as a part-time Lecturer in a Junior College run by Respondent No.1 Management in the year 1999. She joined as a Lecturer in Chemistry. At that time, there was no full workload and therefore she was appointed as a part-time Lecturer. A senior Professor from the Chemistry Department was subsequently elevated to the post of Vice Principal of the College. Thereby his workload got reduced and it was transferred to her.

This happened in February 2003. The Management, therefore, gave her a regular appointment on 14th July 2003 on a full-time post in the payscale of Rs.7225-225-11500. It was stated that this was subject to the final approval of the Education Department.

4. The case of the Petitioner is that papers were forwarded to the concerned authorities of the Government as the approval was not being given. Two grounds were invoked by the Government. Firstly that initially only 1 and half posts were sanctioned and not 2 posts and, therefore, approval of the Government was necessary. Secondly, if the second post is now to be approved, it will have to be approved as that of a Shikshan Sevak. The fact remains that the college continued to receive the services of the Petitioner as a full-time Lecturer in Chemistry. She has been appointed in a post meant for the handicapped person and the post meant for a lady. Therefore, there is no difficulty as far as her categorisation is concerned in any way. The petition makes a grievance that from July 2003 she was not paid full salary and not even part-timer salary. After waiting for sufficient time, this petition has been filed.

5. The College Management has filed a reply stating

that they have no particular grievance against the Petitioner. Their only submission is that approval must be granted by the Government. The Government has filed a reply stating, as stated above, that only 1 and half posts were sanctioned and that approval for the second post must be granted and now the posts will go for a Shikshan Sevak.

6. As seen from the facts stated above, the Petitioner joined way back in the year 1999 though initially as a part-timer. The Shikshan Sevak Scheme came to be applied on 20th March 2000. The scheme excluded part-timers from its purview. The fact remains that the Petitioner was appointed as a part-timer earlier and now there is a full workload in the Junior College. Looking to these peculiar facts, the Government ought not to have taken a technical stand and ought to have approved the particular post and that apart, the Management ought to have paid the salary to the Petitioner inasmuch as they were taking her services. It cannot lie in the mouth of the Management to say that because the Government’s approval was not obtained, they will take the services of the Petitioner but will not pay. Primary liability is of the Management though reimbursement was certainly expected from the Government.

7. In this set of circumstances, in our view, the petition deserves to be allowed. We direct Respondents Nos.1 to 3 to clear the salary of the Petitioner including her arrears. They will start paying her salary as per the scale with effect from the present month's salary payable in August 2005. As far as the arrears are concerned, the College Management will clear the arrears by end of September 2005. They will also forward the papers once again to the Deputy Director of Education for reimbursement and in the facts of the present case, Respondents Nos.4 to 6 will grant approval and reimburse the amounts paid by the College Management to the Petitioner. This is because no objection has been raised by the College Management with respect to the teaching or the performance of the Petitioner in any manner.

8. Rule is made absolute as above.

(H.L. GOKHALE, J.)

(MRS. R.S. DALVI, J.)